HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.25461 of 2005

Dated: 29.08.2007

Between:

Banja Rajeshwar

... Petitioner

AND

The Station House Officer,
Armoor Police Station,
Nizamabad district.
and another.

... Respondents

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.25461 of 2005

ORDER:-

This writ petition is filed for a writ of mandamus to quash First Information Report No.280 of 2005 of respondent No.1 police station.

On 27.8.1993 the Deputy District Development Officer, Zilla Parishad, Nizamabad sent a complaint to the Sub Inspector of Police, Kudhavanpur Police Station wherein it was mentioned that the petitioner who was working as Assistant Teacher in Mandal Praja Parishad School, Nandipet obtained employment by producing false caste certificate and he requested the Station House Officer to register a case for the offence punishable under Section 420 IPC. Consequently, Crime No.38 of 1993 was registered against the petitioner for the offence punishable under Section 420 IPC. After investigation, police filed charge-sheet in the Court of Judicial Magistrate of First Class, Armoor and after a full-dressed trial the learned Magistrate by his judgment dated 23.9.1997 in C.C.No.206 of 1994 acquitted the petitioner by giving him benefit of doubt. It is specifically contended in the affidavit filed in support of the writ petition that the State has not preferred any appeal against the said judgment of the criminal Court and the same attained finality.

Again on 30.10.2005, respondent No.2 addressed a letter to respondent No.1 wherein it is mentioned that the petitioner obtained a false 'BC' certificate and that the same was cancelled on 14.6.1985 by the Joint Collector, Nizamabad and that Writ Petition No.14953 of 1993 filed by the petitioner was dismissed on 13.3.2002 by this Court. Respondent No.2 therefore requested respondent No.1 to launch prosecution against the petitioner for the offences punishable under

Sections 182 and 420 IPC. On receipt of said letter, respondent No.1 registered a criminal case bearing FIR No.280 dated 30.10.2005 for the offences punishable under Sections 182 and 420 IPC. Questioning this action of respondent No.1 in registering a criminal case, the petitioner filed the present writ petition seeking quashing of the same.

The Sub Inspector of Police, Armoor Police Station, Nizamabad filed a counter affidavit in which he admitted that C.C.No.206 of 1994 which was filed against the petitioner on the same set of charges ended in acquittal by judgment dated 23.9.1997 of Judicial Magistrate of First Class, Armoor. The contents of the counter affidavit reveal that the present criminal case, i.e., Crime No.280 of 2005 was registered on the basis of the letter dated 30.10.2005 addressed by respondent No.2 wherein it was alleged that the petitioner obtained false BC certificate.

Heard Sri Venkat Mayur, learned counsel representing Sri B.Vijaysen Reddy, counsel for the petitioner and the learned Assistant Government Pleader for Home for respondents.

Sri Venkat Mayur, submitted that registration of criminal case for the second time on the same allegations is in violation of Article 20(2) of Constitution of India. He took me through the contents of the judgment of the criminal Court in C.C.No.206 of 1994 on the file of the Judicial Magistrate of First Class, Armoor and also the FIR in crime No.280 dated 30.10.2005 and submitted that the allegations against the petitioner relate to the procurement of false BC certificate and that therefore, the petitioner having already been acquitted once, respondent No.1 is not empowered to prosecute the petitioner again for the same offence.

The learned Assistant Government Pleader for Home fairly contended that there is not much difference between the complaints on the basis of which the criminal cases in the year 1993 and 2000 are registered. He also admits that the substance of the accusation

against the petitioner in both the complaints is identical.

I have carefully considered the submissions of the learned counsel. The learned Magistrate in his judgment in C.C.No.206 of 1994 held as under:

> " In my opinion, the version of Dist.Development Officer (ZPP) Nizamabad, contained in para-5 of Ex.p-6, as extracted above, would demolish the case of the prosecution. As already seen, P.Ws.1 & 2 deposed that they do not know on what basis the accused secured teacher post. It appears to me that the material brought on record is not sufficient to prove the guilt of the accused. I am also of the view that Exs.P-3 to P-8 would not conclusively establish the case of the prosecution that the accused during 1989, on the basis of false caste certificate, secured teacher post and thus cheated the concerned authorities."

It is not in dispute that the complaint in respect of which the present writ petition is filed seeking quashing of FIR also relates to the petitioner procuring a false BC certificate. The petitioner who was earlier accused on an identical charge was acquitted. The only difference between the two cases seems to be that in the present criminal complaint, i.e., Crime No.280 of 2005 dated 30.10.2005 there is an addition of an offence by way of Section 182 IPC, which reads as under:

> " **182. False information, with intent to cause public servant to use his lawful power to the injury of another person:-** Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant –
>
> (a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or
>
> (b)to use the lawful power of such public servant to the injury or annoyance of any person.
>
> Shall be punished with imprisonment of either description for a term which may extent to six months, or with fine which may extend to one thousand rupees, or with both."

The gravamen of the accusation against the petitioner in the earlier criminal case is that by using a false 'BC' certificate he secured employment while in the present case the petitioner is accused of obtaining a false 'BC' certificate. Though the earlier criminal case was registered under Section 420 IPC and the petitioner was prosecuted for the said offence, nothing prevented the authorities from prosecuting him for obtaining false 'BC' certificate as well. It is a settled legal position that under Article 20(2) of the Constitution of India no person shall be prosecuted and punished for same offence more than once. This constitutional mandate is also reflected in Section 300 of the Criminal Procedure Code 1973. By launching a fresh prosecution in respect of an offence which was allegedly committed by the petitioner before initiating earlier prosecution, the accused cannot be vexed time and again by registering criminal cases and prosecuting them.

After a careful consideration of entire material on record I am of the considered view that the accusation against the petitioner in both the criminal cases is basically the same, namely, that the petitioner's procurement of false BC certificate and getting employment on the basis of the same. Interestingly, in the earlier criminal case petitioner's securing employment was focused as the main accusation against him while in the latter criminal complaint, his procuring the 'BC' certificate falsely is shown as the offence. However, in substance both the accusations relate to the same offence and the subject matter is common in both the criminal cases.

For the aforementioned reasons, the writ petition deserves to be allowed and accordingly, it is allowed. F.I.R.No.280 of 2005 on the file of respondent No.1 is quashed.

C.V.NAGARJUNA REDDY, J

Dt.29.8.2007
Mdaa.